

## Maritime Administration, DOT

## §310.12-1

action determined appropriate under the 1958 Act or the Act.

(b) The Maritime Administrator may, after consultation with the Superintendents of the schools issue binding executive instructions supplementing this subpart.

### §310.12-1 Form of agreement.

(a) The form of agreement between the Maritime Administrator and a school for annual maintenance and support payments, Federal student subsistence and incentive payments and fuel assistance under the 1958 Act and the Act is set forth below. The form of agreement may be augmented by special, additional articles if requested by the State and if agreed to by the Maritime Administrator. Agreement by the Maritime Administrator will be rare and will occur only if (1) the State presents good cause (e.g. explicit requirement of State law) and (2) the requested addition is not inconsistent with the 1958 Act or the Act and this subpart.

UNITED STATES OF AMERICA, DEPARTMENT OF  
TRANSPORTATION, MARITIME ADMINISTRATION

#### *State Maritime Academy or College Agreement*

This Agreement, entered into as of the 1st day of July 1981, by and between the United States of America, acting through the Department of Transportation, Maritime Administration (hereinafter called the "Administration") and the State of \_\_\_\_\_ (hereinafter called the "State"), acting through the \_\_\_\_\_ Maritime Academy (hereinafter called the "School").

#### WITNESSETH

Whereas:

1. The Agreement is effective July 1, 1981. A number of its provisions will become effective October 1, 1981, or later, and are so indicated;

2. "The Maritime Education and Training Act of 1980," Pub. L. 96-453 (hereinafter called the "Act"), effective October 1, 1981, and its predecessor statute "The Maritime Academy Act of 1958," Pub. L. 85-672 (hereinafter called the "1958 Act"), provide for payments to State, Regional, and Territory maritime academies and colleges (hereinafter called "schools") for the maintenance and support of such schools;

3. The 1958 Act provides for payments to the schools for students in attendance at such schools commencing with the day such students begin their first term of work at

such schools until the completion of the course of instruction, but in no event for more than four academic years;

4. The Act authorizes the Administration to make payments to students entering into a service obligation agreement with the Administration;

5. The Act authorizes the Administration to pay for the cost of all fuel consumed by a training ship furnished by the Administration while such vessel is being used for training purposes;

6. The Act and the 1958 Act provide for certain requirements regarding courses of instruction and educational standards which any such schools must meet in order to receive said payments referred to in paragraph 2 above; and,

7. The Administration has determined that the School has met or by virtue of this Agreement meets all the requirements referred to in paragraph 6 above.

Now, therefore, in consideration of the premises and of the mutual promises hereinafter set forth, the parties hereto agree as follows:

#### Article 1. *Assistance Payments.*

The Administration, subject to the provisions of Article 5 of this Agreement, agrees to make annual payments to the school for not in excess of four years if the school has a four-year course and not in excess of three years if the school has a three-year course under this Agreement to be used for the maintenance and support of the school. The amount of each such annual payment shall be not less than the amount furnished to the school for its maintenance and support by the State but shall not exceed \$25,000, or \$100,000 if the school meets the requirements of Article 5(b) of this Agreement.

#### Art. 2. *Subsistence Payments.*

The Administration, subject to the provisions of Article 5 of this Agreement, agrees to make payments for each student enrolled in a subsidized status before April 1, 1982, at a rate not in excess of \$1,200 for each academic year. These payments shall be made to the school for the account of each such subsidized student who is attending the school. The school agrees that such payments shall be used by the student to assist in defraying the cost of his or her uniforms, textbooks, and subsistence. It is further agreed that the payments under this Article 2 shall commence to accrue on the day each such subsidized student begins his or her first term of work at the school and that such payments shall be paid to the school in such installments as the Administration shall prescribe while such student is in attendance and until the completion of his or her course of instruction, but in no event for more than the normal period required, by the school, to complete the prescribed course.

#### Art. 3. *Student Incentive Payments.*

The Administration, subject to the provisions of Article 5 of this Agreement, agrees to provide the school with service obligation agreement forms for a specified number of students beginning the first term of work at the school on or after April 1, 1982. The service obligation agreement forms shall be signed by the designated students and returned by the school to the Administration which agrees to issue payments to these students in amounts equaling \$1,200 for each academic year to assist them in paying the cost of uniforms, books and subsistence. It is further agreed that under Article 3 payments shall commence to accrue on the day each such subsidized student begins his or her first term of work at the school and that such payments shall be paid in such installments as the Administration shall prescribe while the student is in attendance and until the completion of his or her course of instruction, but in no event for more than the normal period required, by the school, to complete the prescribed course.

**Art. 4. Fuel Payments.**

If funds are appropriated in any given fiscal year and are made available for expenditure by the Administration for fuel consumed by Government-owned training ships furnished to the schools, the allocation of such funds may be as determined in the discretion of the Administration.

**Art. 5. Requirements.**

(a) In consideration of the payments to be made to the school pursuant to Articles 1, 2 and 4 of this Agreement, and of the payments to designated students enrolled in the school pursuant to Article 3 of this Agreement, the school shall, and as a condition of this Agreement agrees to,

(1) Provide courses of instruction in navigation, marine engineering (including steam and diesel propulsion), the operation and maintenance of vessels and equipment, and innovations being introduced to the merchant marine of the United States; and,

(2) Conform to such standards in such courses, in training facilities, in entrance requirements, and in instructors, as are established by the Administration after consultation with the Superintendents of schools.

(b) In addition to the condition provided in paragraph (a) of this Article 5 and as an express condition to receiving payments of any amount in excess of \$25,000 for any one year under Article 1 of this Agreement, the school hereby agrees to admit to its courses of instruction otherwise qualified students resident in any other State or Territory in such numbers as the Administration shall prescribe, except that the number so prescribed shall not, at any time, exceed one third of the total number of students attending the school.

(c)(1) The school agrees that, with respect to the training program for merchant marine officers under the Act and the 1958 Act, and

this Agreement, it will, to the extent applicable, comply with the following provisions of law and implementing regulations duly promulgated thereunder (including, but not limited to 15 CFR Part 8): Title VI, Civil Rights Act, 1964 (42 U.S.C. 2000d); Age Discrimination Act of 1975 (42 U.S.C. 6101); and Vocational Rehabilitation section 504 (29 U.S.C. 794). The school further agrees that it will immediately take any measures necessary to effectuate this subparagraph (c)(1).

(2) It is agreed that these assurances are given in consideration of and for the purpose of obtaining and continuing in effect any financial assistance extended after the date hereof to the school by the Administration including any payments to be rendered pursuant to agreements extending financial assistance which were approved prior to such date, and any violation by the school of any of the provisions of this assurance of non-discrimination shall constitute a breach of this Agreement and of each of such prior agreements.

(3) The school further recognizes and agrees that such financial assistance will be extended by the Administration in reliance upon the representations and agreements made in this assurance of nondiscrimination, and that the United States shall have the right (in addition to any of its other rights under its agreements with the school) to seek judicial enforcement of these assurances. These assurances are binding on the school, its principals, officers, employees, agents, successors, transferees, and assignees.

(d) The Administration is hereby authorized to examine and audit the books, records and accounts of the school whenever it is deemed necessary or desirable. Further, the school agrees to permit the making of photostatic or other copies of any such books, records, papers, memoranda or other documents and to furnish without charge, adequate office space and other facilities reasonably required by such auditors of the Administration or other persons designated by the Administration in the performance of their duties in administering the provisions of the payments provided under this Agreement. This provision complies with Federal Management Circular 73-6 providing for a single audit for educational institutions and assigning one Federal agency with the audit responsibility for schools receiving Federal aid.

**Art. 6. Methods of Payment.**

(a) **Assistance Payments.** The school shall submit to the Administration annually, at the time and in the form approved by the Administration, a voucher for the assistance payment provided in Article 1 of this Agreement. Each voucher for an assistance payment whether under the Act or the 1958 Act, shall be supported by certified statements of operating expenses for the preceding year, of

an estimate of operating expenses for the year with respect to which the voucher is submitted, of amounts furnished by the State to the school for maintenance and support, and of evidence of compliance with the requirements of paragraph (b) of Article 5 of this Agreement. Upon approval of such voucher by the Administration, payment shall be made by the Administration to the school.

(b) *Subsistence Payments.* The school shall submit a monthly voucher, in form approved by the Administration, for the subsistence payments provided in Article 2 of this Agreement. Each voucher for subsistence payments shall be supported by a certified Daily Attendance Report listing the names of all subsidized students and the number of days each was in attendance at the school and is entitled to payment as stated on such voucher. Upon approval of such voucher by the Administration, payment shall be made by the Administration to the school.

(c) *Student Incentive Payments.* The school shall submit a monthly certified Daily Attendance Report listing the names of all designated students who are entitled to the student incentive payments provided in Article 3 of this Agreement and the number of days each was in attendance at the school and is entitled to payment. The Administration shall issue quarterly payments directly to such students.

(d) *Fuel Payments.* Upon notice from the Administration that appropriated funds are available for fuel payments provided in Article 4 of this Agreement, the school will submit a statement of the fuel consumed by the Government-owned training ship supported by copies of all billings representing fuel purchases, a statement of fuel consumed while such ship was being used for training purposes, copies of appropriate fuel consumption entries in the engineering log, and such other information as the Administration may require. The Administration will prepare the necessary voucher and make payment to the school.

*Art. 7. Public Information.*

It is agreed that the school shall include in its curriculum catalogue, student information pamphlets, brochures, and other public information materials, a detail description of the assistance available to the school and its students under the Act, the 1958 Act and this Agreement, including the service obligations of student and graduates who first enter the school on or after April 1, 1982.

*Art. 8. Regulations.*

This Agreement is subject to all the provisions of Part 310, Subpart A, Title 46, Code of Federal Regulations, and the school hereby agrees to conform to said provisions as they may be amended from time-to-time during the period this Agreement is in effect.

*Art. 9. Officials not to Benefit or be Employed.*

No member of or delegate to Congress, nor Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

*Art. 10. Disputes.*

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Director, Office of Maritime Labor and Training who shall reduce his or her decision to writing and mail or otherwise furnish a copy thereof to the school, which decision shall be final and conclusive unless within thirty (30) days from the date of receipt of such copy, the school appeals by mailing or otherwise furnishing said Director, Office of Maritime Labor and Training, a written appeal addressed to the Maritime Administrator, Department of Transportation. The decision of the Maritime Administrator, Department of Transportation, or his or her duly authorized representative, shall be final and conclusive. In connection with any appeal, the school shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the school shall proceed diligently with performance of the Agreement in accordance with the decision of the Director, Office of Maritime Labor and Training.

*Art. 11. Duration of Agreement.*

This Agreement is effective as of the day and year first set forth hereinabove and shall remain in full force and effect for a period of \_\_\_\_ years after said date, unless sooner terminated by either party as herein provided.

*Art. 12. Termination of Agreement.*

This Agreement may be terminated by either party upon sixty (60) days written notice to the other party, *Provided, however*, that notwithstanding any such termination the parties hereto shall continue to be responsible for the faithful performance of all of the terms and provisions of this Agreement through the effective date of such termination. Termination or expiration of this Agreement shall neither affect nor relieve either party of any liability or obligation that may have arisen or accrued prior thereto.

*Art. 13. Renewal of Agreement.*

Unless terminated by notice, as provided for herein under Article 12 of this Agreement, the rights and privileges granted to, and the obligations assumed by, the parties together with all other provisions of this Agreement shall continue in full force and effect and shall be renewed from year-to-year for an additional period of one (1) year from the expiration date herein, unless either party shall at least three (3) months prior to the date of expiration of any additional one (1) year period notify the other

## § 310.50

party in writing that it does not desire the Agreement to be extended for such additional one (1) year period. This Agreement, as extended year-to-year as aforesaid, may be amended, modified or supplemented in writing at any time by the mutual consent of the parties hereto.

### Art. 14. *Assignment Prohibited.*

It is hereby agreed by the school that the Agreement, or any interest herein, shall not be assigned to any other person without the prior written consent of the Administration, which consent may be subject to such terms and conditions as the Administration deems appropriate.

### Art. 15. *Availability of Funds.*

It is understood and agreed by and between the parties hereto that the obligations under this Agreement shall be deemed executory to the extent of the monies available to said parties for the purpose thereof and no liability on account thereof shall be incurred beyond such available monies by either of said parties.

### Art. 16. *Prior Agreement.*

It is hereby understood and agreed by and between the parties hereto that the agreement in effect between the parties on the date prior to the effective date of this Agreement is superseded by this Agreement but only as to obligations not incurred prior to the expiration date of said prior agreement under the provisions of said prior agreement.

In witness whereof, the UNITED STATES OF AMERICA, represented as aforesaid, has caused this Agreement to be executed on its behalf in three counterparts as of the day and year first written hereinabove and actually on the \_\_\_\_ day of \_\_\_\_ 19\_\_.

Attest:

United States of America, Department of Transportation, Maritime Administration.

Secretary. \_\_\_\_\_

By: \_\_\_\_\_

Maritime Administrator of Maritime Affairs.  
[Seal]

Attest:

State of \_\_\_\_\_

\_\_\_\_\_ Maritime Academy

By: \_\_\_\_\_

[Seal]

Approved as to form:

\_\_\_\_\_  
General Counsel, Maritime  
Administration.

[46 FR 37694, July 22, 1981. Redesignated at 48 FR 24081, May 31, 1983]

## Subpart B [Reserved]

## 46 CFR Ch. II (10–1–03 Edition)

### Subpart C—Admission and Training of Midshipmen at the United States Merchant Marine Academy

AUTHORITY: Secs. 204(b) and 1301–1308, Merchant Marine Act, 1936, as amended, (46 U.S.C. 1114(b) and 1295–1295g); 49 CFR 1.66 (46 FR 47458, September 28, 1981).

SOURCE: 47 FR 21812, May 20, 1982, unless otherwise noted.

#### § 310.50 Purpose.

The regulations in this subpart govern the nomination, admission and appointment of midshipmen to the United States Merchant Marine Academy.

#### § 310.51 Definitions.

(a) *Academy* means the United States Merchant Marine Academy.

(b) *Act* means the Maritime Education and Training Act of 1980, Pub. L. 96–453, 94 Stat. 1997, 46 U.S.C. 1295–1295g.

(c) *Administration* means the Maritime Administration, Department of Transportation.

(d) *Administrator* means the Administrator of the Maritime Administration.

(e) *Citizen* means an individual who, by birth or naturalization, owes national allegiance to the United States, but the term excludes United States nationals.

(f) *Foreign student* means an individual who owes national allegiance to a country or political entity other than the United States, and the term includes United States nationals.

(g) *NOAA* means the National Oceanic and Atmospheric Administration.

(h) *USNR* means the United States Naval Reserve.

#### § 310.52 General.

(a) Midshipmen are appointed to the Academy for training to prepare them to become officers in the U.S. merchant marine. The Academy, located at Kings Point, New York, is maintained by the Government as a part of the Administration. After successful completion of the 4-year course of study, a graduate of the Academy shall receive a Bachelor of Science degree and a merchant marine license as either a